

# ***Supplement to the Procedural Safeguards Available to Parents of Students with Disabilities***



*Office of Special Education and  
Early Intervention Services*

October 2006

**Note:** The following Supplement to the Procedural Safeguards Available to Parents of Students with Disabilities apply to due process hearing complaints filed after July 1, 2006, and state level reviews originating from due process complaints that were filed before July 1, 2006.

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### **IMPARTIAL DUE PROCESS HEARING**

A parent, a public agency, or the Michigan Department of Education (MDE) may initiate a hearing by filing a written due process hearing complaint with the MDE and providing a copy of the due process hearing complaint to the other parties.

A hearing may be initiated on matters related to any of the following:

1. Identification;
2. Evaluation;
3. Educational placement;
4. Provision of a free appropriate public education (FAPE);
5. Provision of appropriate Part C services to the child or the child's family;
6. Assignment of financial obligations for Part C services to the parent;
7. Determination that behavior was not a manifestation of the student's disability;
8. Determination of an appropriate interim alternative education setting by the individualized education program (IEP) Team; and
9. Placement in an interim alternative setting for not more than 45 days because maintaining the current placement is substantially likely to result in injury to the student or others.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint. The two-year timeline does not apply to a parent if the parent was prevented from requesting the hearing due to:

1. Specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the due process hearing complaint; or
2. The LEA's withholding of information from the parent that was required to be provided to the parent.

A party may not have a due process hearing until the party or the attorney representing the party files the due process hearing complaint with the MDE and provides the other parties with a copy of the due process hearing complaint. The due process hearing complaint is properly filed when both the MDE and the other parties have received a copy of the complaint from the complaining party.

The due process hearing complaint must contain the following information:

1. The name of the student, address of residence of the student (or available contact information in the case of a homeless child or youth), and the name of the school the student attends;
2. A description of the nature of the problem, including related facts; and
3. A proposed resolution of the problem to the extent known and available to the party at that time.

A model due process hearing complaint form is available on the MDE website: [www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis).

The information contained in the due process hearing complaint must be kept confidential.

### **State Office of Administrative Hearings and Rules**

Upon receipt of a due process hearing complaint, the MDE will forward the complaint to the State Office of Administrative Hearings and Rules (SOAHR) which will:

1. Appoint an administrative law judge (ALJ) to conduct the hearing;
2. Inform the parties of the availability of mediation;
3. Inform the parent of any free or low-cost legal and other relevant services available in the area; and
4. Provide the parent with a copy of the Procedural Safeguards Available to Parents of Students with Disabilities.

The SOAHR will also:

1. Make available to the public and to the parties a statement of the participants' roles and responsibilities and a description of the hearing process;
2. Make available to the public a statement of the ethical rules governing the conduct of ALJs.
3. Develop and make available to the parties general statements of matters such as the burden of proof, legal standards or analyses, and elements for proof

necessary to support claims or defenses commonly raised in special education due process hearings.

### **Local Educational Agencies' Response to a Due Process Complaint**

If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten days of the date that the due process hearing complaint was properly filed, send the parent a response that includes:

1. An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
4. A description of the other factors that is relevant to the LEA's proposed or refused action.

### **Other Party Response to a Due Process Complaint**

Except as stated above, the party receiving a due process hearing complaint must, within ten days of the date that the due process hearing complaint was properly filed, send to the other party a response that specifically addresses the issues raised in the due process hearing complaint.

### **Sufficiency of a Complaint**

A due process hearing complaint is deemed to be sufficient unless the party receiving the due process hearing complaint notifies the ALJ and the other party in writing that the receiving party believes the due process hearing complaint has not met the applicable Individuals with Disabilities Education Act (IDEA) requirements.

The receiving party must notify the ALJ and the complaining party of its objection to the sufficiency of the complaint within 15 days of the date that the due process hearing complaint was properly filed.

Within five calendar days of receiving the notification that the receiving party considers a due process hearing complaint insufficient, the ALJ will decide whether the due process hearing complaint is sufficient, and the ALJ will immediately notify both parties, in writing, of the decision.

## **Complaint Amendment**

The due process hearing complaint may be amended only if:

1. The other party approves of the amendment in writing and is given the chance to resolve the due process hearing complaint through a resolution meeting, described below; or
2. By no later than five days before the due process hearing begins, the ALJ allows the amendment.

If the due process hearing complaint is amended, the timelines for the resolution session meeting and the resolution start again on the date that the amended complaint is properly filed.

## **Subject Matter of a Hearing**

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the filed due process hearing complaint unless the other party agrees.

## **Resolution Session**

Within 15 calendar days from the date a parent properly files a due process hearing complaint, and before the due process hearing begins, the LEA must convene a meeting with the parents and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the complaint. The meeting:

1. Must include a representative of the school district who has decision-making authority on behalf of the school district;
2. May not include an attorney of the school district unless the parent is accompanied by an attorney.

The purpose of the resolution meeting is for the parents to discuss their concerns with the LEA staff so that the LEA has an opportunity to resolve the dispute.

The resolution session need not be held if:

1. The parent and the LEA agree in writing to waive the resolution session ; or
2. The parent and the LEA agree to mediate the dispute.

If the LEA has not resolved the complaint to the satisfaction of the parents within 30 days from the date that the due process hearing complaint was properly filed, the due process hearing may occur and all of the applicable timelines for a due process hearing will commence.

If a resolution to the complaint is reached during the resolution session, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA.

A resolution agreement is enforceable in any state court or in a district court of the United States.

If the parties execute an agreement as a result of the resolution session, either party may void the agreement within three business days from the date the agreement was executed.

### **Administrative Law Judge**

A due process hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the student, or by any person having a personal or professional interest which would conflict with his or her objectivity in the due process hearing. A person who otherwise qualifies to conduct a due process hearing is not an employee of the public agency solely because he or she is paid by the public agency to serve as an ALJ.

A person who qualifies to conduct a due process hearing, at a minimum, must possess:

1. Knowledge of and the ability to understand the provisions of the IDEA, state and federal regulations pertaining to the IDEA, and legal interpretations of the IDEA by state and federal and courts;
2. The knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
3. The knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

### **Decision of the Administrative Law Judge**

The ALJ will issue a final decision within 45 calendar days after the expiration of the 30-day resolution period, unless the ALJ grants a specific extension at the request of either party.

The ALJ's decision must be made on substantive grounds based on a determination of whether the student received a FAPE.

In matters alleging a procedural violation, an ALJ may find that a student did not receive a FAPE only if the procedural inadequacies:

1. Impeded the student's right to a FAPE;

2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
3. Caused a deprivation of educational benefits.

However, if an ALJ determines that an LEA committed a procedural violation, the ALJ may order the LEA to come into compliance.

### **Due Process Hearing Rights**

Any party to a hearing has the right to:

1. Be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of students with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence (including evaluations and recommendations based on those evaluations) that has not been disclosed to that party at least five business days before the hearing; and
4. Obtain written or, at the option of the parent, electronic findings-of-fact and decisions at no cost to the parent.

A parent involved in hearings has the right to have the student who is the subject of the hearing present, to open the hearing to the public, and to have the record of the hearing provided at no cost.

A hearing must be conducted at a time and place that is reasonably convenient to the parent and student involved.

### **State Level Review**

Any party aggrieved by the findings and decision in a due process hearing that originated prior to July 1, 2006, may request a state level review of the local hearing officer's (LHO) decision. The request for review must be filed with the MDE within 25 calendar days of receipt of the LHO's decision. Upon receipt, the MDE will forward the request to the SOAHR which will appoint an ALJ to conduct the review. The ALJ conducting the review shall:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirements of due process;
3. Seek additional evidence, if necessary. (If a hearing is held to receive additional evidence, the hearing rights described above apply.);
4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

5. Make an independent decision on completion of the review;
6. Give a copy of written or, at the option of the parent, electronic findings-of-fact and the decision to the parties; and
7. Conduct reviews involving oral arguments at a time and place which is reasonably convenient to the parent and student involved.

An ALJ may grant specific extensions of time at the request of either party.

### **Civil Action**

Any party aggrieved by the findings and decision made in a state level review has the right to bring a civil action in state or federal court. The party bringing the action has 90 days from the date of the decision of the ALJ to bring such an action.

### **Student's Status During Proceedings**

During the pendency of any hearing or judicial proceeding, the student involved in the hearing must remain in his or her present educational placement unless the LEA and the parent of the student agree otherwise.

If the hearing involves an application for initial admission to a public school, the student, with the consent of the parents, shall be placed in the public school program until the completion of all of the proceedings.